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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,686	11/14/2003	Gregory J. Sesselmann	073328-0156	4338
26371 7590 06/24/2009 FOLEY & LARDNER LLP 777 EAST WISCONSIN AVENUE MILWAUKEE, WI 53202-5306			EXAMINER HALE, GLORIA M	
			ART UNIT 3765	PAPER NUMBER
			MAIL DATE 06/24/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/713,686	<b>Applicant(s)</b> SESSELMANN, GREGORY J.	
	<b>Examiner</b> Gloria Hale	<b>Art Unit</b> 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-98 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-98 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>1-19-06, 6-24-05, 4-18-05, 12-17-04, 11-14-03</u> . | 6) <input type="checkbox"/> Other: ____.  |



## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5,7-18,20-36, 38-43, 47- 52, 59-63,67-76 and 78-89 and 91-98 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blucher et al (US 4510193) in view of Moyer (US 5159718).

Blucher et al discloses constructing protective suits of an odor absorbing/adsorbing substance therein wherein the garment is air permeable including activated charcoal within the ranges as claimed (see Blucher et al col. 1, lines 14-40). The Blucher et al material is washable without quality losses and any impurities thereon would be removed during laundering to thereby reactivate the carbon particles as claimed. Blucher et al discloses the amount of carbon particles within the claimed ranges. (See Blucher col. 6, lines 63-65). However, Blucher et al does not specifically disclose a specific protective suit or garment structure. Moyer discloses a hunters camouflage protective suit that is in the form of overalls 12 with a hat 14 or a jacket and trousers as seen in figures 1,2 and 6. (See Moyer, col. 3, lines 11-37). Moyer discloses the camo as being a brown, green and also including a flame orange fluorescent coloring. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the garment of Blucher et al

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to include the trouser, jacket, shirt or jumpsuit overall construction in a camo low visibility with a high visibility fluorescent orange coloring that is perfect for hunting wherein the camo disguises the hunter from animals yet the flame orange is a safety color of high visibility so that the other hunter's can see and not shoot the other hunter's in the woods. (See Moyer, col. 1). In col. 3, line 35 Moyer discloses the material as being waterproof which would also be water resistant or repellant as claimed. Blucher discloses the activated charcoal as being impregnated into the base layer and or bonded thereto. The clothing covers the pelvic or groin regions in the form of the pants, trousers or bodysuit/jumpsuit and covers the head with the hat. It also would have been an obvious modification to include other accessory items in addition to a hat such as masks, socks and gloves so that the hunter's entire body is covered from the elements and which is also constructed of the same materials as the suits, pants, jackets and shirts.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 19, 37, 53, 64-66, 77 and 90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blucher in view of Moyer and further in view of Slagle et al (US 5445863).

Blucher et al and Moyer et al disclose the invention substantially as claimed except for the material as being of a thermally insulating material. Slagle et al discloses a camouflage material that is also a thermally insulated material with the multiple layers of an inner , outer and core insulating layer there between. (See Slagle et al, figures 3A, 3B, outer layer 10, inner layer 12 and core 14C; Abstract and col. 7, lines 3-16) Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the garment and material of Blucher and Moyer to construct the camo material of a multilayer insulating material in order to keep the hunter warm while hunting.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 44-46 and 54-58 are rejected under 35 U.S.C. 102(b) as being anticipated by Blucher et al (US 4510193).

Blucher et al discloses a odor absorbing material including activated carbon particles on an outer layer of material that is air permeable and would absorb odors emanating from a wearer's body. Blucher disclose a protective suit in general which would cover the torso region of the wearer. Blucher discloses the activated charcoal in the claimed range. (See Blucher et al, col. 6,lines 63-65 and col. 1,lines 14-40).

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-98 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-27 of U.S. Patent No. 6,134,718; claims 1-21 of US Patent No. 6,009,559, claims 1-21 of US Patent No. 5,790,987, claims 1-6 of US Patent No. 5,539,930 and claims 1-12 of US Patent No. 5,383,236 . Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim the same odor absorbing charcoal fabric structure in the form of a garment and body covering system and the method of absorbing odors from a wearer's body while wearing the odor absorbing garment.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gloria Hale/  
Primary Examiner, Art Unit 3765

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